LANGHORNE, BY &C. v. RICHMOND RAILWAY CO. AND ANOTHER.—Decided at Richmond, April 18, 1895.—*Buchanan*, J:

1. PRACTICE AT COMMON LAW—*Oyer—deed referred to by way of inducement.* The right to crave oyer of papers mentioned in a pleading applies, as a general rule, only to deeds and letters of probate and administration, and not to other writings, and only applies to a deed when a party pleading relies upon the direct and intrinsic operation of the deed. Hence a defendant is not entitled to have oyer of deed referred to in the plaintiff's declaration merely by way of inducement or introduction to other matters necessary to be alleged.

2. PRACTICE AT COMMON LAW—*Consolidation of corporations—liabilities of old company.* The corporation which is created by the consolidation of other corporations, or the surviving corporation where another or others are merged into it, is ordinarily deemed the same as each of the corporations which formed it for the purpose answering for the liabilities of the old corporation, and may be sued under its new name, or under the name of the surviving company for their debts, as if no change had been made in the name, or in the organization of the original corporations.

3. PLEADING AT COMMON LAW — *Misjoinder — consolidation of corporations.* Where a corporation liable for personal injuries inflicted by its agents becomes merged into, or consolidated with, another corporation which by authority of law or act of the parties is responsible for such liability, an action at law may be maintained for such injuries against either of said corporations, but not a joint action against both. They are not jointly liable. One is liable for committing the alleged tort, the other is liable by reason of the consolidation. In a joint action it must appear from the declaration that the contract or tort upon which the action is brought is a joint contract, or a joint tort; otherwise the declaration will be bad on demurrer for misjoinder of causes of action and of parties.

CAHOON, TREASURER, v. MCCULLOUGH AND OTHERS.—Decided at Staunton, October 3, 1895.—*Riely*, J:

1. PROCEEDING AT COMMON LAW—*Motion against several—judgment against one—merger—non-suit.* In a proceeding by motion against an ex-treasurer and his sureties to recover a balance on county levies left in his hands, a confession of judgment by the principal does not merge the cause of action against the sureties, and judgment may be rendered against the latter at a succeeding term of the court. Nor are the rights of the plaintiff in any wise affected by suffering a non-suit, but he may at a subsequent term renew his action or motion on the same cause of action against any or all of the parties against whom he has not already obtained judgment.

HULVEY AND OTHERS v. HULVEY AND OTHERS.—Decided at Staunton, October 8, 1895.—*Buchanan*, J:

1. DEED FROM GRANTOR WHO HAS NO TITLE—*Color of title—adverse possession.* Although a deed of conveyance of real estate from a grantor who has no title conveys no title to the grantee, yet it is color of title, and possession taken under it and held adversely for the statutory period will ripen into a good title.

2. POSSESSION OF LAND BY WIDOW BEFORE ASSIGNMENT OF DOWER. *Interest in land.* The interest of a widow in the real estate of her deceased husband, before assignment of dower, is an interest for which she may maintain an action of ejectment, or an action of unlawful detainer, and possession taken or continued by her, as widow, is in privity with the heirs or devisees of her husband.

3. ADVERSARY POSSESSION—*Privity with opposing claimant.* In questions of adverse possession a higher degree of proof is required where the possession was begun in privity with the opposing claimant than where no such relation existed. Where the possession was originally in privity with the adverse claimant there must be a clear, positive and continuous disclaimer and disavowal of the title, and the assertion of an adverse right brought home to the adverse claimant. The possession must become tortious and unlawful by the disloyal acts of the party in possession so open, notorious and continued as to show fully and clearly the changed character of his possession and knowledge thereof to the adverse claimant. Exclusive possession, receipt of profits, payment of taxes, making repairs and getting fire-wood are not of themselves sufficient proof of an adverse holding.

4. ADVERSARY POSSESSION—*Privies—accepting and recording deed from one who has no title—notice.* Where one is in possession of land in privity with another, the taking and recording by the party in possession of a deed to the land from one who has no title, does not affect the rights of the other party until he has actual notice thereof. No one is required to watch the clerk's office to guard against the acquisition of such rights.

DAVIS & SNAPP v. POLAND.—Decided at Richmond, November 14, 1895.—*Riely*, J:

1. PARTNERSHIP—*Dissolution—admissions of one partner—new liability.* After dissolution of a partnership, one partner cannot, by his sole act, bind his copartner against his consent, so as to impose a new liability, or to revive one barred by the statute of limitations. Nor can his declarations or admissions be received as the *only* evidence of the existence of a debt, against the partnership. But if there is other evidence of the existence of the debt, or it is admitted by the pleadings, such declarations or admissions, though made after dissolution, may be received in evidence, provided they relate to transactions of the partnership whilst in existence, and do not impose any fresh liability.

2. ACTION ON NEGOTIABLE NOTE—*Production of note—record in Appellate Court.* In an action on a negotiable note, the note is a necessary part of the plaintiff's evidence, and there can be no judgment for the plaintiff without the production of the note. If judgment be rendered for the plaintiff and a writ of error awarded to that judgment, the record certified to the appellate court can alone be looked to to ascertain what evidence was introduced in the trial court, and if this record fails to disclose the fact that the note was offered in evidence in the trial court the judgment will be reversed. The appellate court will not presume what the record fails to disclose.